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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants	:	Trevor Blumenau
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Title	:	"Content Display Monitor"
Art Unit	:	3625
Examiner	:	James Zurita

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BRIEF ON APPEAL

Mail Stop Appeal Brief
Commissioner for Patents
P.O. Box 1450
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Sir:

Pursuant to the Notice of Appeal mailed November 22, 2006 in connection with the above-identified patent application, applicant respectfully submits the instant Brief on Appeal in accordance with 37 C.F.R. § 41.37.

I.   Real Party In Interest

The above-referenced patent application has been jointly assigned to Nielsen Media Research, Inc. and NetRatings, Inc., who are the real parties in interest to this appeal. The assignments have been recorded in the United States Patent and Trademark Office ("PTO") at Frame 8165 of Reel 0685, at

Frame 0874 of Reel 010546, at Frame 0782 of Reel 016814, and at Frame 0883 of Reel 017057.

II.   Related Appeals and Interferences

The applicant is unaware of any related appeals or interferences. However, the applicant notes that the parent to this application (U.S. Patent 6,108,637) has been involved in multiple patent infringement lawsuits including, for example, NetRatings, Inc. v. Coremetrics, Inc. (No. 05-314 (D. Del.)), NetRatings, Inc. v. Omniture, Inc. (No. 05-313 (D. Del.)), NetRatings, Inc. v. SageMetrics Corp. (No. 05:4507 (C.D. Ca.)), NetRatings, Inc. v. Sane Solutions, LLC (No. 05-CV-5076 (S.D.N.Y.)), and NetRatings, Inc. v. Visual Sciences, LLC (No. 05-CV-349 (E.D. Va.)). In each of these lawsuits, the defendant has taken a license under U.S. Patent 6,108,637, thereby demonstrating widespread industry usage and recognition of the importance of the patented technology.

III.   Status of the Claims

Claims 317-330 and 419-440 were withdrawn in the final Office action as being directed toward non-elected inventions. The applicant does not traverse this restriction requirement and will pursue these claims in divisional applications. Therefore, claims 242-245, 247-255, 257-264, 266-275, 278-284, 286-291, 313-316, and 331-418 are currently pending in this application. The pending claims are presented in the Claims Appendix of this Brief.

The final Office action rejected claims 242, 253, 263, 275, 287 and 313-315 for double patenting in view of certain claims of US Patent 6,108,637. Although applicant respectfully traverses the reasoning supporting this rejection, a terminal disclaimer is being filed herewith to eliminate this issue. Therefore, the double patenting rejection has been overcome.

Claims 242-245, 247-255, 257-264, 266-275, 278-284, 286-291, 313-316, and 331-418 stand rejected. Therefore, claims 242-245, 247-255, 257-264, 266-275, 278-284, 286-291, 313-316, and 331-418 form the subject matter of this appeal.

IV.   Status of the Amendments

All amendments that have been made in this application have been entered. No amendments were filed after the final Office action. No further amendments are necessary. However, as noted above, a terminal disclaimer is being filed concurrently herewith to eliminate the double patenting issue.

V.   Summary of the Claimed Subject Matter

The following summary of the independent claims is provided to comply with rule 41.37(c)(1)(v). In compliance with rule 41.37(c)(1)(v), a summary of the dependent claims is not provided because none of the pending dependent claims recite means plus function or step plus function limitations.

Although reference numerals and specification citations are inserted below in accordance with 37 C.F.R. 41.37(c)(1)(v), these reference numerals

and citations are merely examples of where support may be found in the specification for the terms used in this section of the brief. There is no intention to suggest, in any way, that the terms of the claims are limited to these examples. Although, as demonstrated by the reference numerals and citations below, the claims are fully supported by the specification as required by law, it is improper under the law to read limitations from the specification into the claims. Pointing out specification support for the claim terminology as is done here to comply with rule 41.37(c)(1)(v) does not in any way limit the scope of the claims to those examples from which they find support. Nor does this exercise provide a mechanism for circumventing the law precluding reading limitations into the claims from the specification. In short, the reference numerals and specification citations are not to be construed as claim elements or in any way used to limit the scope of the claims.

In the invention as defined in claim 242, a system in a computer networked environment for generating monitoring information about a display of content is recited as comprising: a content provider site 301 (FIGS. 3A-3C) that stores a content file (Page 3, lines 7-9 and Page 20, lines 19-22), wherein the content file has embedded therein at least one computer executable monitoring instruction (Page 22, line 21-Page 23, line 5) to cause generation of monitoring information about the display of content associated with the content file (Page 20, line 22-Page 21, line 2; Page 22, lines 21-25; and Page 23, lines 1-32); a content display site 302 (FIGS. 3A-3C) to receive the content file from the content provider site 301 (Page 20, lines 16-22; Page 20,

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line 32-Page 21, line 2), to display the content associated with the content file (Page 23, lines 15-16 and Page 23, lines 25-32), and to execute the monitoring instruction (Page 23, lines 15-16 and Page 23, lines 25-32), wherein the content display site 302 executes the at least one embedded monitoring instruction when the content file is accessed (Page 22, lines 3-20 and Page 23, line 6-Page 24, line 2), thereby causing monitoring information about the display of the content to be generated (Page 22, lines 3-20 and Page 23, line 6-Page 24, line 2); and a remote site (Page 21, lines 2-3 and Page 38, lines 26-30) which did not transfer the content file from the content provider site 301 to the content display site 302 (Page 20, line 32-Page 21, line 4), which is different from the content provider site 301 302 (Page 20, line 32-Page 21, line 4 and Page 39, lines 2-6), and which is adapted to receive the generated monitoring information (Page 20, line 32-Page 21, line 4).

In the invention as defined in claim 253, a system in a computer networked environment for detecting each time content is displayed at a content display site 302 (Page 25, lines 26-27) is recited as comprising: a content provider site 301 that stores a content file (Page 3, lines 7-9 and Page 20, lines 19-22), wherein the content file has embedded therein at least one computer executable monitoring instruction to cause detection of display of content associated with the content file (Page 20, line 22-Page 21, line 2 and Page 22, lines 21-25); a content display site 302 to receive the content file from the content provider site 301 (Page 20, lines 16-22; Page 20, line 32-Page 21, line 2), to display the content associated with the content file (Page

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23, lines 15-16 and Page 23, lines 25-32), and to execute the monitoring instruction (Page 23, lines 15-16 and Page 23, lines 25-32), wherein when the content display site 302 reads the content file (Page 23, lines 15-16 and Page 23, lines 25-32), the at least one embedded computer executable monitoring instruction associated with the content file is executed at the content display site 302 (Page 23, lines 15-16; Page 23, lines 25-32; and Page 24, lines 18-26), thereby causing display of the content to be detected (Page 25, line 26-Page 26, line 11) and causing generation of a data signal encoded with data indicating that the content was displayed (Page 20, line 28-Page 21, line 12; Page 22, lines 3-20; Page 23, line 6-Page 24, line 2; and Page 24, lines 18-26); and a remote site (Page 21, lines 2-3 and Page 38, lines 26-30) which did not deliver the content file to the content display site 302 (Page 20, line 32-Page 21, line 4), which is different from the content provider site 301 (Page 20, line 32-Page 21, line 4 and Page 39, lines 2-6), and which is adapted to receive the generated data signal (Page 20, line 32-Page 21, line 4).

In the invention as defined in claim 275, a method for detecting each time content is displayed at a content display site 302 (Page 25, lines 26-27) is recited as comprising: receiving a content file from a content provider site 301 at a content display site 302 (Page 20, lines 16-22; Page 20, line 32-Page 21, line 2), the content file having embedded therein at least one computer executable monitoring instruction that causes display of content associated with the content file to be detected (Page 20, line 22-Page 21, line 2 and Page 22, lines 21-25); accessing the content file at the content display site 302 to

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cause display of the content and execution of the at least one embedded computer executable monitoring instruction to cause generation of a data signal encoded with data indicating that the content was displayed (Page 23, lines 15-16; Page 23, lines 25-32; and Page 24, lines 18-26); and transmitting the data signal to a remote site (Page 21, lines 2-3 and Page 38, lines 26-30) which did not transfer the content file from the content provider site 301 to the content display site 302 (Page 20, line 32-Page 21, line 4) and which is different from the content provider site 301 (Page 20, line 32-Page 21, line 4 and Page 39, lines 2-6).

In the invention as defined in claim 287, a computer readable medium is recited as comprising a file containing content for display and having embedded therein at least one computer executable monitoring instruction (Page 22, line 21-Page 23, line 5) that, when executed, causes display of the content associated with the file to be detected (Page 25, line 26-Page 26, line 11), and at least one computer executable instruction that, when executed, causes data indicating the content was displayed to be transmitted to a remote site (Page 21, lines 2-3 and Page 38, lines 26-30) which did not supply the file (Page 20, line 22-Page 21, line 4; Page 22, lines 21-25; and Page 38, lines 26-30).

In the invention as defined in claim 313, an article of manufacture comprising a tangible medium storing executable machine readable instructions is recited as comprising: a computer executable display instruction which, when executed, causes an image originally provided by a content

provider to be displayed on a display device (Page 20, line 22-Page 21, line 2 and Page 22, lines 21-25); a computer executable monitoring instruction associated with the display instruction such that the monitoring instruction is executed to monitor the display when the image is displayed (Page 25, line 26-Page 26, line 11) and such that the monitoring instruction is not executed when the image is not displayed (Page 20, line 22-Page 21, line 2; Page 22, lines 21-25; Page 24, lines 18-22); and a computer executable transmit instruction which, when executed, causes data indicating the image was displayed to be transmitted to a remote site (Page 21, lines 2-3 and Page 38, lines 26-30) which did not supply the image (Page 20, line 22-Page 21, line 4).

In the invention as defined in claim 314, an article of manufacture comprising a tangible medium storing executable machine readable instructions is recited as comprising: a computer executable display instruction (Page 22, line 21-Page 23, line 5) which, when executed, causes an image originally provided by a content provider to be displayed on a display device (Page 20, line 22-Page 21, line 2; Page 22, lines 21-25; and Page 23, lines 1-32); a computer executable monitoring instruction which, when executed, gathers monitoring information concerning display of the image (Page 20, line 22-Page 21, line 2 and Page 22, lines 21-25); and a computer executable transmit instruction which, when executed, causes the monitoring information to be transmitted to a remote site (Page 21, lines 2-3 and Page 38, lines 26-30) which did not supply the image (Page 20, line 22-Page 21, line 4 and Page 39, lines 2-6), wherein the monitoring instruction and the display instruction are

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embedded in an HTML file (Page 22, line 21-Page 23, line 5) such that the monitoring instruction is only executed when the HTML file is executed to display the image (Page 22, line 21-Page 24, line 2).

In the invention as defined in claim 315, an article of manufacture comprising a tangible medium storing executable machine readable instructions is recited as comprising: a computer executable display instruction which, when executed, causes an image originally provided by a content provider to be displayed on a display device (Page 20, line 22-Page 21, line 2 and Page 22, lines 21-25); a computer executable monitoring instruction which, when executed, gathers monitoring information concerning display of the image (Page 20, line 22-Page 21, line 2 and Page 22, lines 21-25); and a computer executable transmit instruction which, when executed, causes the monitoring information to be transmitted to a remote site (Page 21, lines 2-3 and Page 38, lines 26-30) which did not supply the image (Page 20, line 22-Page 21, line 4), wherein the display instruction is embedded in an HTML file (Page 22, line 21-Page 23, line 5) and the monitoring instruction is referenced by the HTML file (Page 23, lines 1-32) such that the monitoring instruction is only executed when the HTML file is executed to display the image (Page 22, line 21-Page 24, line 2).

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VI. <u>Grounds of Rejection To Be Reviewed on Appeal</u>

The grounds of rejection to be reviewed on appeal are as follows:

Ground 1:   The Examiner's contention that claim limitations can be ignored.

Ground 2:   The Examiner's contention that Dedrick anticipates claim 242.

Ground 3:   The Examiner's contention that Dedrick anticipates claim 253.

Ground 4:   The Examiner's contention that Dedrick anticipates claim 263.

Ground 5:   The Examiner's contention that Dedrick anticipates claim 275.

Ground 6:   The Examiner's contention that Dedrick anticipates claim 287.

Ground 7:   The Examiner's contention that Dedrick anticipates claim 313.

Ground 8:   The Examiner's contention that Dedrick anticipates claim 314.

Ground 9:   The Examiner's contention that Dedrick anticipates claim 315.

Ground 10:   The Examiner's Contention That Dedrick renders claims 334, 339, 341, 345, 350, 352, 356 361, 363, 367, 372, 374, 378, 383, 385, 389, 394, 396, 400, 405, 407, 411, 416 and 418 obvious.

VII.   Argument

Ground 1.   The Examiner's Contention That Claim Limitations Can Be Ignored Based on Their Type Is In Error

The Examiner's claim construction underlying the art rejections made in the final Office action is based on legal error. In particular, it is based on the erroneous belief that claim terms can be ignored. For example, the final Office action states:

> *The Examiner notes that some claim limitations carry little or no patentable weight.* For example, in claims directed to a system, the limitation
>
> > ...a remote site which did not transfer the content file from the content provider site to the content display site, which is different from the content provider site, and which is adapted to receive the generated monitoring information (claim 242)
>
> does little to modify the structures that make up the system elements.
>
> Similarly, in claims directed to methods, the claim language attempts to modify structure and its import. However, the language is static and is not actively involved in the steps in a manner that distinguished them from prior art.
>
> As such, the claim language provides no patentable moment and carries little to no patentable weight.

(Final Office action, Page 11)(emphasis added). However, it is legal error for the Office to ignore claim elements (*i.e.*, to give claim recitations no patentable weight). On the contrary, it is well established that the Office is *required* to give each and every term in a claim its broadest reasonable meaning during examination. ("During patent examination, the claims are given the broadest reasonable interpretation consistent with the specification."

MPEP § 904.01, citing, *In re Morris*, 127 F.3d 1048, 44 USPQ2d 1023 (Fed. Cir. 1997. See also, MPEP § 2111)). *Ignoring* claim terms is *not* giving those terms their broadest reasonable scope. On the contrary, it is doing the very opposite – giving those terms no scope whatsoever. Thus, the claim construction of the Examiner is based on legal error and must be reversed.

Turning more specifically to the claim construction analysis, the above quoted passage from the final Office action demonstrates that the Examiner's claim construction proceeded as follows. First, the Examiner attempted to classify claim recitations as either "functional" or "structural." Then, based on this classification, the Examiner proceeded to ignore those recitations he considers "functional" in the apparatus claims, and to ignore those recitations he considers "structural" in the method claims. However, this approach is improper. For example, it is impermissible to ignore functional claim language. As explained in the MPEP:

> A fundamental principle contained in 35 U.S.C. 112, second paragraph is that applicants are their own lexicographers. They can define in the claims what they regard as their invention essentially in whatever terms they choose so long as any special meaning assigned to a term is clearly set forth in the specification. Applicant may use functional language, alternative expressions, negative limitations, or any style of expression or format of claim which makes clear the boundaries of the subject matter for which protection is sought. As noted by the court in In re Swinehart, 439 F.2d 210, 160 USPQ 226 (CCPA 1971), a claim may not be rejected solely because of the type of language used to define the subject matter for which patent protection is sought.

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MPEP § 2173.01 (emphasis added). This quotation is consistent with MPEP §

2173.05(g) which expressly discusses functional recitations. In particular,

MPEP § 2173.05(g) states

> A functional limitation is an attempt to define something by what it does, rather than by what it is (e.g., as evidenced by its specific structure or specific ingredients). There is nothing inherently wrong with defining some part of an invention in functional terms. Functional language does not, in and of itself, render a claim improper. In re Swinehart, 439 F.2d 210, 169 USPQ 226 (CCPA 1971). *A functional limitation must be evaluated and considered, just like any other limitation of the claim, for what it fairly conveys to a person of ordinary skill in the pertinent art in the context in which it is used.* Therefore, *it is improper for the Examiner to ignore a claim recitation simply because it can allegedly be categorized as "functional."*

MPEP § 2173.05(g)(emphasis added). On the basis of this authority, it is

quite clear that the Examiner's decision to ignore claim language in the

apparatus claims because that language is allegedly "functional" is reversible

error.

It is often a difficult task to classify a claim recitation as functional or

structural. Consider, for example, the recitation from claim 242 identified

above in the quote from the final Office action:

> ...a remote site which did not transfer the content file from the content provider site to the content display site, which is different from the content provider site, and which is adapted to receive the generated monitoring information

The final Office action states that this recitation "does little to modify the

structures that make up the system elements." However, this is incorrect. The

language in question identifies the relative positions and interrelations of certain elements of claim 242. For example, the phrase "did not transfer the content file from the content provider site to the content display site" makes it evident that the remote site is not intermediate the content provider site and the content display site. The phrase "which is different from the content provider site" makes it clear that the remote site and the content provider site are not the same site. Further, the phrase "which is adapted to receive the generated monitoring information" makes it clear that the remote site is positioned and structured to communicate with the content display site which, as shown in other portions of claim 242, generates the monitoring information. Therefore, contrary to the Examiner's statement, the recitations of claim 242 identified by the Examiner do in fact "modify the structures that make up the system elements."

This is not surprising. Functional expressions often explain structural interrelations between elements. This point is supported by the examples given in the MPEP. For example:

> Whether or not the functional limitation complies with 35 U.S.C. 112, second paragraph, is a different issue from whether the limitation is properly supported under 35 U.S.C. 112, first paragraph, or is distinguished over the prior art. A few examples are set forth below to illustrate situations where the issue of whether a functional limitation complies with 35 U.S.C. 112, second paragraph, was considered. It was held that the limitation used to define a radical on a chemical compound as "incapable of forming a dye with said oxidizing developing agent" although functional, was perfectly acceptable because it set definite boundaries on

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> the patent protection sought. In re Barr, 444 F.2d
> 588, 170 USPQ 33 (CCPA 1971). In a claim
> that was directed to a kit of component parts
> capable of being assembled, **the Court held
> that limitations such as "members adapted to
> be positioned" and "portions . . . being
> resiliently dilatable whereby said housing
> may be slidably positioned"** *serve to precisely
> define present structural attributes of
> interrelated component parts of the claimed
> assembly.* In re Venezia, 530 F.2d 956, 189
> USPQ 149(CCPA 1976).

MPEP § 2173.05(g)(emphasis added). As in the examples highlighted above,

the above quoted recitation from claim 242 defines structural attributes of

interrelated components, and it must be given full weight for all that it

conveys to a person of ordinary skill in the art.

The inherent difficulty in distinguishing "functional" recitations from

"structural" recitations demonstrates the wisdom of the MPEP approach

discussed above. Quite simply, it is deceptively difficult and unproductive to

focus on claim term classification in the hope of identifying a rationale for

ignoring those terms. Instead, as noted in the above MPEP quotes, all

recitations (whether they are functional or structural), should (and, in fact,

must) be evaluated for what they fairly convey to a person of ordinary skill in

the art. By following this rule, claims under examination will be given their

broadest reasonable scope and patent examination can focus on a meaningful

examination of the bounds of the actual claim language, not on fancifully

reconstructed claims that eliminate claim recitations because of their alleged

type.

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The fact that the Examiner has an incorrect view of the scope of the claims is demonstrated by the Examiner's erroneous position that "the features upon which the applicant relies [in the Response mailed July 22, 2005] are not recited in the rejected claim(s)." (Final Office Action, Page 8). In support of this position, Page 8 of the Final Office action includes a table comparing the applicant's argument to the actual claim language. Although the Examiner intends this table to show that there is a lack of correspondence between the language of applicant's argument and the actual claim language, even a cursory examination of that table, (reproduced here for the Board's convenience with the actual claim language corresponding to the remarks language highlighted in bold), demonstrates the opposite point, namely, that the applicant has argued the claim language almost verbatim.

Claim	Remarks	Actual claim language
242	...a remote site which did not transfer the content file from the content provider site to the content display site to receive the monitoring information generated at the content display site.	...**a remote site which did not transfer the content file from the content provider site to the content display site**, which is different from the content provider site, and which is adapted **to receive the generated monitoring information**
253	...a remote site which did not deliver the content file to the content display site to receive the data signal generated by the content display site.	...**a remote site which did not deliver the content file to the content display site**, which is different from the content provider site, and which is adapted **to receive the generated data signal.**
263	...a remote site which did not provide the content file to the content display site to receive the data signal generated by the content display site.	...**a remote site which did not provide the content file to the content display site** and adapted **to receive the generated data signal.**
275	...transmitting the data signal to a remote site which did not	...**transmitting the data signal to a remote site which did not**

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	transfer the content file from the content provider site to the content display site.	**transfer the content file from the content provider site to the content display site** and which is different from the content provider site.

By comparing the bolded portions of the actual claim language cited in the Examiner's example to the corresponding remarks noted by the Examiner in each row of the above table, it is plain to see that the Examiner is reading the claim language in a an inconsistent manner. On the one hand, the Examiner indicates he is free to ignore claim language based on its classification, and, on the other hand, the Examiner argues that applicant's nearly verbatim use of the claim language in his arguments somehow relies on features "not recited in the rejected claims." (Id.) Both of these positions are plainly in error, and these claim construction errors may well have led to the erroneous art rejections discussed in the following sections of this brief.

Ground 2: The Examiner's Contention that Dedrick Anticipates Claim 242 Is In Error.

The Final Office action rejects claim 242 as being anticipate by Dedrick, US Patent 5,724,521 ("Dedrick"). For at least the following reasons, this rejection is in error and must be reversed.

1. Dedrick Is Different In Kind From The System Of Claim 242

Dedrick discusses methods and apparatus for providing electronic advertisements to end users in a consumer best-fit pricing model. (Dedrick, Title). To this end, Dedrick provides a cooperative system in which client

devices 12 are coupled to respective "metering servers 14 within a local area network (LAN)." (Col. 2, lines 55-58). Each metering server 14 serves as the conduit between its respective client devices 12 and various other network entities including, for example, advertisers 18, publishers 20 and yellowpage servers 22 (see, for example, FIG. 1, blocks 104-116 of FIGS. 6a-6b, blocks 214-218 of FIGS. 7a-7b, Col. 12, lines 22-24, and Col. 17, line 64 – Col. 18, line 19). By virtue of its conduit role, each metering server 14 is able to monitor the activity of the client devices. For example, the metering servers maintain a transaction database 32 that tracks and logs the end user's consumption of electronic content. (Col. 11, lines 51-58).

To enable the system to monitor the end user's activity, end users agree to participate in the system by receiving electronic information via their respective metering servers 14. (See FIG. 1). In particular, users of the client devices 12 initially register with the system by entering their personal demographic data (Col. 3, lines 42-50). Thereafter, the metering server 14 provides content to the client devices 12 either by pushing advertisements (Col. 17, lines 36-64) or in response to user requests for electronic content (Col. 5, lines 6-10).

Each client device 12 includes a client activity monitor 24. (See FIG. 2). The client activity monitor 24 "tracks the consumer variables corresponding to the preferences of the end user(s) of client system 12." (Col. 7, lines 1-3). Specifically, when "an end user consumes electronic information, and also possibly interacts with the electronic information, client

activity monitor 24 associates the electronic information with the appropriate consumer variables and stores this data in the personal profile database 27." (Col. 7, lines 3-7). The metering server 14 cooperates with the client activity monitor 24 to monitor the end user's activity. (Col. 17, lines 15-35). To this end, the metering server 14 includes a metering process 36. (Id. and FIG. 3).

Thus, it can be seen that Dedrick discusses an electronic information distribution system in which user activities are monitored by, for example, having electronic information delivered via a metering server 14. It is one task to monitor the activity of users who have their communications pass through a metering server 14. It is a different challenge to monitor user behavior in an open system such as the Internet. The later problem is solved by the system recited in claim 242.

Against this background, the distinctions between the recitations of claim 242 and the system of Dedrick will now be explained.

2. **A Variable Is Not An Executable Instruction**

Claim 242 comprises a content provider site that stores a content file. The content file has embedded therein at least one *computer executable monitoring instruction* to cause generation of monitoring information about the display of content associated with the content file. Claim 242 also comprises a content display site *to receive the content file from the content provider site*, and *to execute the at least one embedded monitoring instruction when the content file is accessed*, thereby causing monitoring

information about the display of the content to be generated. Dedrick

completely fails to teach or suggest a content file having embedded therein a

computer executable monitoring instruction. Further, Dedrick fails to teach or

suggest transferring a content file with an embedded computer monitoring

instruction from a content provider site to a content display site as referred to

in claim 242.

The Final Office action attempts to find such a content file in the

electronic information that Dedrick transfers to client devices 12. (Final

Office action, page 14, citing, Dedrick, Col. 4, lines 49-58 and Col. 12, line 66

to Col. 13, lines 28). More specifically, in Dedrick:

> each piece of electronic information received by
> client system 12 includes a header block which
> includes the consumer variables and their related
> objects or fields for that piece of electronic
> information. For example, the header block of a
> given piece of electronic information may
> include an indicator that a color preference
> variable is associated with certain option fields.
> In addition, default colors for particular fields or
> objects, or a default consumption format, such
> as audio or video, for the electronic information
> may also be included in the header block.

(Dedrick, Col. 4, lines 49-59). Thus, Dedrick associates consumer variables

with objects or fields for a piece of electronic information and then tracks the

values associated with the variables to monitor user activity. In the words of

Dedrick:

> ***The client activity monitor 24 tracks the***
> ***consumer variables*** corresponding to the
> preferences of the end user(s) of client system
> 12. When an end user consumes electronic
> information, and also possibly interacts with that

> electronic information, *client activity monitor
> 24 associates the electronic information with
> the appropriate consumer variables and stores
> this data in the personal profile database 27.*

(Dedrick, Col. 7, lines 1-7)(emphasis added). Thus, Dedrick embeds

consumer variables in electronic content and tracks those variables.

However, *a variable is not a computer executable instruction*. Instead, the

ordinary meaning of "variable" is:

> In programming, *a variable is a value that can
> change*, depending on conditions or on
> information passed to the program. *Typically, a
> program consists of instructions that tell the
> computer what to do and data that the program
> uses when it is running. The data consists of
> constants or fixed values that never change
> and variable values* (which are usually
> initialized to "0" or some default value because
> the actual values will be supplied by a program's
> user). Usually, both constants and variables are
> defined as certain data types. Each data type
> prescribes and limits the form of the data.
> Examples of data types include: an integer
> expressed as a decimal number, or a string of
> text characters, usually limited in length.

(http://whatis.techtarget.com/definition/0,,sid9_gci213275,00.html)(emphasis

added). This definition is consistent with the meaning of the term "variable"

as used in Dedrick. For example, Dedrick states:

> *Consumer variables refer to demographic,
> psychographic and other profile information.
> Demographic information refers to the vital
> statistics of individuals,* such as age, sex,
> income and marital status. Psychographic
> information refers to the lifestyle and behavioral
> characteristics of individuals, such as likes and
> dislikes, color preferences and personality traits
> that show consumer behavioral characteristics.
> Thus, *the consumer variables refer to*

> *information* such as marital status, color
> preferences, favorite sizes and shapes, preferred
> learning modes, employer, job title, mailing
> address, phone number, personal and business
> areas of interest, the willingness to participate in
> a survey, along with various lifestyle
> information. This information will be referred to
> as user profile data.

(Dedrick, Col. 3, lines 35-48)(emphasis added). Thus, Dedrick uses the term

"variable" consistently with its common ordinary meaning, namely, as a

changeable data value. The consumer variables of Dedrick are not computer

executable instructions. Accordingly, although Dedrick embeds variables in

the headers of its electronic information, Dedrick does not teach or suggest

embedding a computer executable monitoring instruction in such electronic

information. In contrast, claim 242 specifically requires the content file to

have embedded therein at least one computer executable monitoring

instruction. On this basis alone, it is indisputable that Dedrick does not

anticipate the recitations of claim 242 and, thus, the 35 U.S.C. § 102 rejection

of claim 242 must be reversed.

For the record and to avoid any misunderstanding on this point, it is

expressly noted that the above argument is not intended to indicate that a

system that uses variables would fall outside the scope of claim 242. On the

contrary, variables are widely used in computer programs for a variety of

reasons. Accordingly, claim 242 covers all systems meeting its recitations,

irrespective of whether such systems employ one or more variables for one or

more purposes. In other words, the inclusion or omission of variables is not

determinative of whether a system falls within the scope of claim 242. As

explained above, an embedded computer executable monitoring instruction as recited in claim 242 is not taught or suggested in Dedrick and, thus, Dedrick -does not form an appropriate basis for rejecting claim 242.

3.   **Client Devices 12 Do Not Execute A
        Monitoring Instruction Embedded in A Content File**

As explained above, Dedrick does not embed a computer executable monitoring instruction in a content file. As such, the client devices 12 of Dedrick do not execute at least one computer executable monitoring instruction embedded in a content file received from a content provider site when the content file is accessed as recited in claim 242. On the contrary, as can be easily seen by referring to FIG. 2 of Dedrick, each client device 12 in Dedrick is provided with a local client activity monitor 24 which "tracks the consumer variables corresponding to the preferences of the end user(s)." (Col. 7, lines 1-3). While the consumer variables are transferred with electronic content, as explained above, consumer variables are not computer executable monitoring instructions. As such, Dedrick does not teach a content display site that executes a monitoring instruction embedded in a content file received from a content provider as recited in claim 242. Accordingly, Dedrick does not anticipate the recitations of claim 242 and, thus, the 35 U.S.C. § 102 rejection of claim 242 based on Dedrick must be reversed.

4.   **The Metering Servers Are Not
        <u>Remote Sites As Recited In Claim 242</u>**

Claim 242 comprises "a remote site which did not transfer the content

file from the content provider site to the content display site, which is different

from the content provider site, and which is adapted to receive the generated

monitoring information." The Final Office action contends that this recitation

reads on Dedrick's metering server 14. (See Final Office action, Pages 13-

14). However, this is not correct.

The metering server 14 of Dedrick is expressly shown to be the

intermediary between the client system 12 and the remainder of the Dedrick

system. This point can be easily verified by reviewing Dedrick FIG. 2 and

various places throughout the Dedrick specification such as, for example, Col.

2, lines 62-65 which states "The server 14 is typically a dedicated computer

that provides an interconnect contact node which allows the client systems 12

to communicate with the server 14 and other client systems." As another

example, Dedrick states:

> [e]ach metering server 14 contains a list of titles
> of available electronic advertisements, as well as
> providing transitory storage of advertisements
> that have been requested by consumers who are
> being served by the metering server 14. In one
> embodiment, an advertisement may also be
> temporarily stored in a metering server 14 if the
> consumers served by the metering server 14
> highly match the consumer scale stored within
> the advertisement.

(Dedrick, Col. 5, lines 6-10). Thus, the metering server of Dedrick is involved

with transferring content to the client systems 12. As such, the metering

server 14 of Dedrick is *not* "a remote site which did not transfer the content file from the content provider site to the content display site" as recited in claim 242. Accordingly, the 35 U.S.C. § 102 rejection of claim 242 is not supported by the Examiner's argument and should be overturned.

The Final Office action claims to find support for its erroneous position that the metering server 14 is uninvolved in transferring content to the client systems 12 in Dedrick's discussion of an appraisal agent at Col. 9, lines 49-Col. 10, line 44. However, there is no reason to read this portion of Dedrick in isolation from the remainder of the Dedrick specification and figures which plainly show that any such appraisal agent and/or the information retrieved by the same must pass through the metering server 14.

Again, FIG. 1 is quite unmistakable in showing the metering server 14 as being positioned intermediate to the client systems 12 and the remainder of the network, including the yellowpage server. Further, the following passage shows that the metering process 36 of the metering server 14 monitors the interactive process between the client system 12 and the yellowpage server (e.g., the interaction of the appraisal agent and the yellowpage server):

> ***Alternatively, the end user may initiate a request of an advertising content database 70 such as a "yellow pages"*** which is stored in the advertising database of the yellow pages server 22. The interactive process 76 allows the end user to search and view advertisements from a library(s) of ads. ***The interactive process 76 may allow the end user to answer queries and take alternate paths to external databases.*** The interactive model may also allow the end user to initiate a query with the advertiser requesting follow-up information.

> ***The metering server 14 in conjunction with the client activity monitor 24 of the client system may monitor the end user's consumption of electronic advertising information and provide user profile data to the metering server 14*** relating to the end user. For example, the metering process 36 may monitor the amount of time an end user spends viewing an electronic advertisement, or which particular advertisement or page of the advertisement was of interest to the end user. ***The metering process 36 may further monitor what answers were provided by the user, or paths taken by the user in an interactive model, along with follow-up requests initiated by the end user in an interactive model.***

(Dedrick, Col. 17, lines 6-27)(emphasis added). Thus, the metering server 14 of Dedrick is involved with communications between the client server 12 and the remainder of the system and is, thus, not "a remote site which did not transfer the content file from the content provider site to the content display site," as claimed.

**5.   There Is No Reason to Modify Dedrick
            To Meet The Recitations of Claim 242**

The Final Office action rejected claim 242 as anticipated by Dedrick. As demonstrated above, this rejection is in error because Dedrick fails to teach each of the recited elements of claim 242. The Final Office action made no rejection of claim 242 under 35 U.S.C. § 103, and, thus, has not provided a prima facie case of obviousness of that claim. Nevertheless, the applicant notes for the record that there is no motivation to modify Dedrick to meet the recitations of claim 242.

For example, Dedrick provides a client activity monitor 24 on each of the client devices 12 and a metering process 36 on the metering servers 14 that cooperate "to monitor the end user's consumption of electronic advertising information and provide user profile data to the metering server 14." (Dedrick, Col. 17, lines 15-20). As such, Dedrick already has functionality at the metering server 14 and the client device 12 to perform activity monitoring. Therefore, there is no reason to modify Dedrick to embed one or more computer executable monitoring instructions in the transferred electronic information and, thus, Dedrick actually teaches away from the system recited in claim 242.

The Dedrick system is a controlled electronic information distribution system wherein all electronic information delivered to the client devices 12 passes through a metering server 14. The system of claim 242 is advantageous over the system discussed in Dedrick in that it is not limited to use in such a tightly controlled distribution system. Instead, the system of claim 242 embeds one or more computer executable monitoring instructions in content files such that the content display site will execute the monitoring instruction when the content file is accessed. As a result, in the system of claim 242 there is no need for a pre-existing client activity monitor 24 on the client device 12, and there is no need for a metering server 14 to achieve client activity monitoring. This is an important improvement in that it enables client activity monitoring in free flowing content distribution systems such as the Internet.

To modify Dedrick to meet the recitations of claim 242, one would necessarily eliminate the metering servers 14 and their attendant monitoring functionality to eliminate their costs as they would no longer be needed. However, every claim of Dedrick includes a metering server[1]. It is well settled law that, "[i]f the proposed modification or combination of the prior art would change the principle of operation of the prior art invention, then the teachings of the references are not sufficient to render the claims prima facie obvious." MPEP § 2143.01, citing, In re Ratti, 270 F.2d 810 (C.C.P.A. 1959). Accordingly, since all of the claims of Dedrick recite a metering server, modifying Dedrick to meet the recitations of claim 242 by eliminating the metering server 14 would change the principle of operation of the Dedrick invention and, thus, the art of record does not render claim 242 prima facie obvious.

In view of the foregoing, the rejection of claim 242 as anticipated by Dedrick is clearly in error because Dedrick fails to teach or suggest embedding at least one computer executable monitoring instruction in a content file for execution at a content display site. Further, as demonstrated above, apart from the teachings of applicant's own disclosure, there is no rationale for modifying Dedrick to meet the recitations of claim 242. Accordingly, claim 242 and all claims depending therefrom are allowable over Dedrick and the rejections of those claims must be reversed.

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[1] Compare, for example, the elements of claim 1 to FIG. 3 showing an example metering server 14.

**Ground 3:   The Examiner's Contention That Dedrick Anticipates
Claim 253 Is In Error.**

The Final Office action argues that claim 253 is anticipated by
Dedrick. This contention is in error. Claim 253 comprises a system
comprising, among other things, a content provider site that stores a content
file that has embedded therein at least one computer executable monitoring
instruction to cause detection of display of content associated with the content
file. As discussed above in connection with claim 242, Dedrick does not teach
or suggest embedding a computer executable monitoring instruction in a
content file and, thus, does not teach or suggest a content provider site storing
such a content file. On this basis alone, the 35 U.S.C. § 102 rejection of claim
253 must be reversed.

Claim 253 also comprises a content display site to receive the content
file from the content provider site. Claim 253 further specifies that, *when the
content display site reads the content file*, the at least one embedded computer
executable monitoring instruction *associated with* the content file is executed
at the content display site. As discussed above, Dedrick does not embed a
computer executable monitoring instruction in a content file. Accordingly,
Dedrick does not teach or suggest a content display site that executes such an
embedded computer executable monitoring instruction when it reads a content
file. Accordingly, on this basis also, the 35 U.S.C. § 102 rejection of claim
253 must be reversed.

Additionally, claim 253 comprises "a remote site which did not deliver
the content file to the content display site, which is different from the content

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provider site, and which is adapted to receive the generated data signal." The "generated data signal" is specified earlier in claim 253 to be a data signal encoded with data indicating that the content of the content file was displayed at the content display site, and that the generation of this data signal is caused by execution of the computer executable monitoring instruction occurring when the content display site reads the content file. As discussed above, the Examiner erroneously argued that the metering server 14 of Dedrick is such a remote site. However, as conclusively demonstrated above in connection with the above discussion of claim 242, the metering server 14 is always involved with delivering content to the content display site (see, for example, Dedrick, FIG. 2). Accordingly, the metering server 14 is not a remote site "which did not deliver the content file to the content display site" as recited in claim 253.

In view of the foregoing, it is evident that the Final Office action fails to demonstrate that Dedrick meets any of the elements of claim 253. Accordingly, the rejection of claim 253 as being anticipated by Dedrick is clearly in error and must be reversed. Similarly, the rejections of all claims depending from claim 253 are in error and must be reversed.

Ground 4: **The Examiner's Contention That Dedrick Anticipates Claim 263 Is In Error.**

The Final Office action argues that claim 263 is anticipated by Dedrick. This contention is in error. Claim 263 comprises a system comprising, among other things, a computer readable medium having a content file originally provided by a content provider stored thereon. The content file is expressly recited to have embedded therein at least one computer executable monitoring instruction to cause detection of display of content associated with the content file. As discussed above in connection with claim 242, Dedrick does not teach or suggest embedding a computer executable monitoring instruction in a content file and, thus, does not teach or suggest a computer readable medium storing such a content file. On this basis alone, the 35 U.S.C. § 102 rejection of claim 263 must be reversed.

Claim 263 also comprises a content display site to *only* execute the at least one embedded computer executable monitoring instruction of the content file if the content file is accessed. As discussed above, Dedrick does not embed a computer executable monitoring instruction in a content file. As such, Dedrick cannot fairly be said to teach or suggest a content display site that only executes a computer executable monitoring instruction when a content file is accessed. Accordingly, Dedrick does not teach or suggest a content display site as recited in claim 263.

Additionally, claim 263 comprises "a remote site which did not provide the content file to the content display site and adapted to receive the generated data signal" The "generated data signal" is specified earlier in claim

263 to be a data signal encoded with data indicating that the content of the content file was displayed at the content display site, and that the generation of this data signal is caused by execution of the computer executable monitoring instruction occurring when the content file is accessed. As discussed above, the Examiner erroneously argued that the metering server 14 of Dedrick is such a remote site. However, as conclusively demonstrated above in connection with claim 242, the metering server 14 is always involved with delivering content files to the content display site (see, for example, Dedrick, FIG. 2). Accordingly, the metering server 14 is not a remote site "which did not provide the content file to the content display site" as recited in claim 263.

In view of the foregoing, it is evident that the Final Office action fails to demonstrate that Dedrick meets any of the elements of claim 263. Accordingly, the rejection of claim 263 as being anticipated by Dedrick is clearly in error and must be reversed. Similarly, the rejections of all claims depending from claim 263 are in error and must be reversed.

Ground 5:   The Examiner's Contention That Dedrick Anticipates Claim 275 Is In Error.

The Final Office action argues that claim 275 is anticipated by Dedrick. This contention is in error. Claim 275 comprises a method comprising, among other things, receiving a content file from a content provider site at a content display site, the content file having embedded therein at least one computer executable monitoring instruction that causes display of content associated with the content file to be detected. As discussed above in

connection with claim 242, Dedrick does not teach or suggest embedding a computer executable monitoring instruction in a content file and, thus, does not teach or suggest receiving such a content file from a content provider site. On this basis alone, claim 275 cannot be anticipated and the 35 U.S.C. § 102 rejection of claim 275 must be reversed.

Claim 275 also comprises accessing the content file at the content display site to cause execution of the at least one embedded computer executable monitoring instruction to cause generation of a data signal encoded with data indicating that the content was displayed. As discussed above, Dedrick does not embed a computer executable monitoring instruction in a content file. As such, Dedrick cannot fairly be said to teach or suggest accessing a content file to cause execution of a computer executable monitoring instruction embedded in the content file to, in turn, cause generation of a data signal encoded with data indicating that the content was displayed. Accordingly, Dedrick also fails to teach or suggest the second element of claim 275.

Additionally, claim 275 comprises "transmitting the data signal to a remote site which did not transfer the content file from the content provider site to the content display site and which is different from the content provider site." The "data signal" is specified earlier in claim 275 to be a data signal encoded with data indicating that the content of the content file was displayed, and that the generation of this data signal is caused by execution of the computer executable monitoring instruction occurring when the content file is

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accessed. As discussed above, the Examiner erroneously argued that the metering server 14 of Dedrick is a remote site and that the transmission of monitoring data from the client system 12 to the metering server 14 of Dedrick meets this element of claim 275. However, as conclusively demonstrated above in connection with claim 242, the metering server 14 is always involved with delivering content files to the content display site (see, for example, Dedrick FIG. 2). Accordingly, the metering server 14 is not a remote site "which did not transfer the content file from the content provider site to the content display site" as recited in claim 275. As a result, Dedrick also fails to meet the third element of claim 275.

In view of the foregoing, it is evident that the Final Office action fails to demonstrate that Dedrick meets any of the elements of claim 275. Accordingly, the rejection of claim 275 as being anticipated by Dedrick is clearly in error and must be reversed. Similarly, the rejections of all claims depending from claim 275 must be reversed.

Ground 6:   The Examiner's Contention That Dedrick Anticipates Claim 287 Is In Error.

The Final Office action argues that claim 287 is anticipated by Dedrick. This contention is in error. Claim 287 comprises a computer readable medium comprising, among other things, a file containing content for display and having embedded therein at least one computer executable monitoring instruction that, when executed, causes display of the content associated with the file to be detected. As discussed above in connection with

claim 242, Dedrick does not teach or suggest embedding a computer executable monitoring instruction in a file containing content for display. As a result, claim 287 cannot be anticipated by Dedrick and the 35 U.S.C. § 102 rejection of claim 287 and all claims depending therefrom must be reversed.

In addition to the content and the at least one computer executable monitoring instruction mentioned above, claim 287 also specifies that the file contains at least one computer executable instruction that, when executed, causes data indicating the content was displayed to be transmitted to a remote site which did not supply the file. Dedrick in no way teaches or suggests a computer readable medium storing a file containing: (a) content, (b) an embedded computer readable monitoring instruction, and(c) an instruction to cause transmission of data indicating the content was displayed to a remove site which did not supply the file. Accordingly, it is clear error to reject claim 287 as anticipated by Dedrick. As a result, the rejection of claim 287 and all claims depending therefrom must be revered.

Ground 7:   The Examiner's Contention That Dedrick Anticipates Claim 313 Is In Error.

The Final Office action argues that claim 313 is anticipated by Dedrick. This contention is in error. Claim 313 comprises a tangible medium storing executable machine readable instructions comprising, among other things, (1) a computer executable display instruction which, when executed, causes an image originally provided by a content provider to be displayed on a display device; and (2) a computer executable monitoring instruction

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associated with the display instruction such that the monitoring instruction is executed to monitor the display when the image is displayed and such that the monitoring instruction is not executed when the image is not displayed. There is no teaching anywhere in Dedrick of associating a computer executable display instruction with a computer executable monitoring instruction such that the monitoring instruction is executed when the image is displayed, but is not executed when the image is not displayed. Indeed, the Final Office action does not even attempt to identify any such association in Dedrick.

To the extent the client activity monitor 24 of Dedrick can be seen as a computer executable monitoring instruction and an electronic information file from the metering server 14 can be seen as including a display instruction to display an image, Dedrick nowhere indicates any association between those instructions such that the client activity monitor 24 would execute when the image is displayed, but would not execute when the image is not displayed. Indeed, there is no hint anywhere in Dedrick that providing such an association would be possible or in any way beneficial. Accordingly, it is evident that claim 313 is not anticipated by Dedrick and the 35 U.S.C. § 102 rejections of claim 313 and all claims depending therefrom must be reversed.

Ground 8: The Examiner's Contention That Dedrick Anticipates Claim 314 Is In Error.

The Final Office action argues that claim 314 is anticipated by Dedrick. This contention is in error. Claim 314 comprises a tangible medium storing executable machine readable instructions comprising, among other things, (1) a computer executable display instruction which, when executed, causes an image originally provided by a content provider to be displayed on a display device; and (2) a computer executable monitoring instruction which, when executed, gathers monitoring information concerning display of the image; wherein the monitoring instruction and the display instruction are embedded in an HTML file such that the monitoring instruction is only executed when the HTML file is executed to display the image. There is absolutely no teaching or suggestion in Dedrick of embedding a display instruction to display an image and a monitoring instruction to monitor display of the image in an HTML file so that the monitoring instruction is only executed when the HTML file is executed to display the image.

The Final Office action points out that Dedrick mentions HTML at Col. 4, lines 3-15, (Final Office action, Page 17), but otherwise fails to mention where any of the recitations of claim 314 can be found in Dedrick. Therefore, the applicant and the Board are left to speculate as to the grounds for the rejection.

As discussed above, Dedrick discusses a cooperative system wherein a client activity monitor 24 operating at a client system 12 in conjunction with a metering process 36 operating at a metering server 36 monitor consumption of

electronic advertising information. (Dedrick, FIGS. 1-3, and Col. 17, lines 16-29). Therefore, Dedrick teaches away from embedding a computer executable display instruction in an HTML file *together with* a computer executable monitoring instruction as recited in claim 314, since Dedrick already has monitoring functionality operating at the metering server 14 and the client system 12. Accordingly, Dedrick does not anticipate the recitations of claim 314. As a result, the rejection of claim 314 and all claims depending therefrom must be reversed.

Ground 9:   The Examiner's Contention That Dedrick Anticipates Claim 315 Is In Error.

The Final Office action argues that claim 315 is anticipated by Dedrick. This contention is in error. Claim 315 comprises a tangible medium storing executable machine readable instructions comprising, among other things, (1) a computer executable display instruction which, when executed, causes an image originally provided by a content provider to be displayed on a display device; and (2) a computer executable monitoring instruction which, when executed, gathers monitoring information concerning display of the image; wherein the display instruction is embedded in an HTML file and the monitoring instruction is referenced by the HTML file such that the monitoring instruction is only executed when the HTML file is executed to display the image. As discussed above in connection with claim 314, there is absolutely no teaching or suggestion in Dedrick of embedding a display instruction to display an image and a reference to a monitoring instruction to

monitor display of the image in an HTML file so that the monitoring instruction is only executed when the HTML file is executed to display the image.

At most, Dedrick discusses embedding consumer variables in a header associated with electronic information. While these variables are acted upon by the client activity monitor 24, these variables do not reference a computer executable monitoring instruction so that the monitoring instruction is only executed when the HTML file is executed to display the image. Accordingly, Dedrick does not teach or suggest the recitations of claim 315. As a result, the rejections of claim 315 and all claims depending therefrom must be reversed.

Ground 10: **The Examiner's Contention That Dedrick renders Claims 334, 339, 341, 345, 350, 352, 356, 361, 363, 367, 372, 374, 378, 383, 385, 389, 394, 396, 400, 405, 407, 411, 416 and 418 Obvious Is In Error.**

The underlying legal analysis for the obviousness rejections of claims 334, 339, 341, 345, 350, 352, 356 361, 363, 367, 372, 374, 378, 383, 385, 389, 394, 396, 400, 405, 407, 411, 416 and 418 made in the Final Office action is the same. Specifically, the Final Office action argues that although Dedrick does not[2] discuss monitoring operating system events of the content display site as recited in these claims, it would have been obvious to do so because

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[2] The Final Office action includes a typographical error in that it erroneously states "Dedrick discloses" when it is plain from the remainder of the rejection that it intended to state "Dedrick does not disclose." Even a cursory review of Dedrick will demonstrate that it, in fact, does not disclose monitoring operating system events which, presumably, is the reason the Examiner makes these rejections under 35 U.S.C. § 103.

"computers have operating systems." (Final Office action, Pages 22-23).

Clearly, this statement amounts to nothing more than a recognition that

operating systems were known prior to the September 3, 1996 priority date of

this application. However, the fact that an element is known is not a rationale

for combining that element with other elements in a claim. As explained by

the Federal Circuit in In re Rouffet, 47 U.S.P.Q.2d 1453 (Fed. Cir. 1998):

> As this court has stated, "virtually all [inventions] are combinations of old elements." Therefore, an examiner may often find every element of a claimed invention in the prior art. If identification of each claimed element in the prior art were sufficient to negate patentability, very few patents would ever issue. Furthermore, rejecting patents solely by finding prior art corollaries for the claimed elements would permit an examiner to use the claimed invention itself as a blueprint for piecing together elements in the prior art to defeat the patentability of the claimed invention. Such an approach would be "an illogical and inappropriate process by which to determine patentability." To prevent the use of hindsight based on the invention to defeat patentability of the invention, this court requires the examiner to **show** a motivation to combine the references that create the case of obviousness.

Id. at 1457-58 (citations omitted and emphasis added). Therefore, as a matter

of law, merely identifying operating systems as old, is not sufficient to support

the 35 U.S.C. § 103 rejections. Accordingly, the Examiner's official notice

that computers had operating systems prior to the earliest effective filing date

of this application is clearly insufficient to support an obviousness rejection.

The obviousness rejection attempts to overcome this difficulty by

stating that "one of ordinary skill in the art at the time of the invention would

have been motivated to combine Dedrick with information concerning

operating systems ... for the obvious reason that an operating system is

software that controls the allocation and usage of hardware resources such as

memory, central processing unit (CPU) time, disk space and peripheral

devices; the operating system is also the foundation software on which

applications depend." (Id.) However, even a cursory review of this analysis

demonstrates that it is merely an identification of certain properties of an

operating system. Identifying old properties of an element is little different

from identifying an element as old. As demonstrated above, the mere fact that

an element is old is not sufficient reason to find its combination with other

elements obvious. Similarly, the mere fact that the old element has

identifiable properties is not, in and of itself, a rational for combining the

element with other elements to recreate a claimed combination.

This latter point will be self-evident to the Board. As pointed out in

the Rouffet quotation above, the reason for the suggestion requirement is to

prevent the use of hindsight reconstruction to reject claims. Simply put, it is

an easy thing to identify old elements. It is an equally easy thing, once an

invention is known, to look at the old element, see why it is useful in a

claimed combination and then conclude that it is obvious to combine the old

element in the combination because of that usefulness. Of course, if this

approach to the obviousness analysis were permissible, virtually nothing will

be patentable since, as noted by the Federal Circuit, virtually all inventions are

combinations of old elements and virtually every element recited in every

claim will have some usefulness (otherwise why would it be claimed?).

Therefore, it is evident that the underlying mode of analysis behind the

rejections of claims 334, 339, 341, 345, 350, 352, 356, 361, 363, 367, 372,

374, 378, 383, 385, 389, 394, 396, 400, 405, 407, 411, 416 and 418 is legally

flawed.

Looking to the actual facts, as opposed to the Examiner's unfounded

speculations, it is immediately apparent that there is no rationale for

modifying Dedrick to monitor operating system events. Dedrick has discussed

a methodology for monitoring user activity, namely, monitoring consumer

variables in headers of electronic information consumed by those users. There

is no suggestion in Dedrick that the discussed methodology was insufficient in

any way, or that there would be any reason to forgo or supplement the

elaborate monitoring approach it discusses in its specification. Accordingly,

there is no evidence of any rationale for modifying Dedrick to meet the

recitations of claims 334, 339, 341, 345, 350, 352, 356, 361, 363, 367, 372,

374, 378, 383, 385, 389, 394, 396, 400, 405, 407, 411, 416 and/or 418. the

law is quite clear that an obviousness rejection must be based on facts, not

conjecture.

> The Supreme Court... foreclosed the use of substitutes for facts in determining obviousness under section 103. The legal conclusion of obviousness *must be supported by facts*. Where the legal conclusion is not supported by facts it cannot stand.

In re Warner, 379 F.2d 1011, 1017 (C.C.P.A. 1967). Since there is no actual

evidence to support the obviousness rejections of claims 334, 339, 341, 345,

350, 352, 356, 361, 363, 367, 372, 374, 378, 383, 385, 389, 394, 396, 400,

405, 407, 411, 416 and 418, those rejections must be overturned.
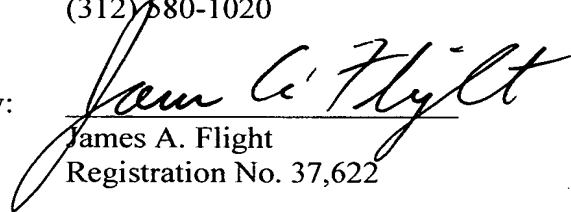
Conclusion

In view of the foregoing remarks, it is respectfully submitted that all of

the rejections made in the final Office action should be overturned and this

application should be passed to issuance.

Respectfully submitted,

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VIII. Claims Appendix

242. (Previously Presented) A system in a computer networked environment for generating monitoring information about a display of content, comprising:

a content provider site that stores a content file, wherein the content file has embedded therein at least one computer executable monitoring instruction to cause generation of monitoring information about the display of content associated with the content file;

a content display site to receive the content file from the content provider site, to display the content associated with the content file, and to execute the monitoring instruction, wherein the content display site executes the at least one embedded monitoring instruction when the content file is accessed, thereby causing monitoring information about the display of the content to be generated; and

a remote site which did not transfer the content file from the content provider site to the content display site, which is different from the content provider site, and which is adapted to receive the generated monitoring information.

243. (Previously Presented) The system of claim 242, wherein the at least one embedded computer executable monitoring instruction comprises at least one computer executable monitoring instruction that is

located in the content file and that causes generation of the monitoring information about the display of the content.

244. (Previously Presented)   The system of claim 242, wherein the at least one embedded computer executable monitoring instruction comprises a link to at least one computer executable monitoring instruction that resides external to the content file and that causes generation of the monitoring information about the display of the content.

245. (Previously Presented)   The system of claim 242, wherein the generated monitoring information indicates that the content was displayed.

246. (Cancelled)

247. (Previously Presented)   The system of claim 242, wherein the generated monitoring information about the display of the content is stored on the remote site.

248. (Previously Presented)   The system of claim 247, wherein the remote site performs analysis on the generated monitoring information about the display of the content.

249. (Previously Presented) The system of claim 242, wherein the content file is provided by a content provider with an assigned account number, and wherein the generated monitoring information about the display of the content contains the account number of the content provider.

250. (Previously Presented) The system of claim 242, wherein the generated monitoring information about the display of the content includes a time stamp.

251. (Previously Presented) The system of claim 242, wherein the generated monitoring information about the display of the content includes identifying information about the content display site.

252. (Previously Presented) The system of claim 242, wherein the generated monitoring information about the display of the content includes demographic information.

253. (Previously Presented) A system in a computer networked environment for detecting each time content is displayed at a content display site, comprising:

a content provider site that stores a content file, wherein the content file has embedded therein at least one computer executable monitoring

instruction to cause detection of display of content associated with the content file;

a content display site to receive the content file from the content provider site, to display the content associated with the content file, and to execute the monitoring instruction, wherein when the content display site reads the content file, the at least one embedded computer executable monitoring instruction associated with the content file is executed at the content display site, thereby causing display of the content to be detected and causing generation of a data signal encoded with data indicating that the content was displayed; and

a remote site which did not deliver the content file to the content display site, which is different from the content provider site, and which is adapted to receive the generated data signal.

254.   (Previously Presented)   The system of claim 253, wherein the at least one embedded computer executable monitoring instruction comprises at least one computer executable monitoring instruction that is located in the content file and that detects the display of the content and generates the data signal.

255.   (Previously Presented)   The system of claim 253, wherein the at least one embedded computer executable monitoring instruction comprises a link to at least one computer executable monitoring instruction

that resides external to the content file and that causes detection of the display

of the content and generation of the data signal.

256.   (Cancelled)

257.   (Previously Presented)   The system of claim 253,

wherein the remote site extracts the encoded data from the data signal and

stores the data.

258.   (Previously Presented)   The system of claim 257,

wherein the remote site performs analysis on the stored data.

259.   (Previously Presented)   The system of claim 253,

wherein the content file is provided by a content provider with an assigned

account number, and wherein the encoded data of the data signal includes the

account number of the content provider.

260.   (Previously Presented)   The system of claim 253,

wherein the encoded data of the data signal includes a time stamp.

261.   (Previously Presented)   The system of claim 253,

wherein the encoded data of the data signal includes identifying information

about the content display site.

262.   (Previously Presented)   The system of claim 253, wherein the encoded data of the data signal includes demographic information.

263.   (Previously Presented)   A system in a computer networked environment for detecting each time content is displayed at a content display site, comprising:

a computer readable medium having a content file originally provided by a content provider stored thereon, wherein the content file has embedded therein at least one computer executable monitoring instruction to cause detection of display of content associated with the content file;

a content display site to display the content associated with the content file and to execute the computer executable monitoring instruction, wherein the content display site only executes the at least one embedded computer executable monitoring instruction if the content file provided by the content provider is accessed, thereby causing the display of the content to be detected and causing generation of a data signal encoded with data indicating that the content was displayed; and

a remote site which did not provide the content file to the content display site and adapted to receive the generated data signal.

264.   (Previously Presented)   The system of claim 263, wherein the computer readable medium is resident on a content provider site.

265.   (Cancelled)

266.   (Previously Presented)   The system of claim 263,

wherein the computer readable medium is resident on the content display site.

267.   (Previously Presented)   The system of claim 263,

wherein the at least one embedded computer executable monitoring instruction

comprises at least one computer executable monitoring instruction that is

located in the content file and that detects the display of the content and

generates the data signal.

268.   (Previously Presented)   The system of claim 263,

wherein the at least one embedded computer executable monitoring instruction

comprises a link to at least one computer executable monitoring instruction

that resides external to the content file and that causes detection of the display

of the content and generation of the data signal.

269.   (Previously Presented)   The system of claim 263,

wherein the remote site extracts the encoded data from the data signal and

stores the data.

270. (Previously Presented)   The system of claim 269,

wherein the remote site performs analysis on the stored data.

271. (Previously Presented)   The system of claim 263,

wherein the content file is provided by a content provider with an assigned

account number, and wherein the encoded data of the data signal includes the

account number of the content provider.

272. (Previously Presented)   The system of claim 263,

wherein the encoded data of the data signal includes a time stamp.

273. (Previously Presented)   The system of claim 263,

wherein the encoded data of the data signal includes identifying information

about the content display site.

274. (Previously Presented)   The system of claim 263,

wherein the encoded data of the data signal includes demographic information.

275. (Previously Presented)   A method for detecting each time

content is displayed at a content display site, comprising:

receiving a content file from a content provider site at a content display

site, the content file having embedded therein at least one computer executable

monitoring instruction that causes display of content associated with the

content file to be detected;

accessing the content file at the content display site to cause display of

the content and execution of the at least one embedded computer executable

monitoring instruction to cause generation of a data signal encoded with data

indicating that the content was displayed; and

transmitting the data signal to a remote site which did not transfer the

content file from the content provider site to the content display site and which

is different from the content provider site.

276.   (Cancelled)

277.   (Cancelled)

278.   (Previously Presented)   The method of claim 275,

wherein the at least one embedded computer executable monitoring instruction

comprises at least one computer executable monitoring instruction that is

located in the content file to detect the display of the content and to generate

the data signal.

279.   (Previously Presented)   The method of claim 275,

wherein the at least one embedded computer executable monitoring instruction

comprises a link to at least one computer executable monitoring instruction

that resides external to the content file to cause detection of the display of the content and generation of the data signal.

280. (Previously Presented) The method of claim 275, wherein the content file is provided by a content provider with an assigned account number, and wherein the encoded data of the data signal includes the account number of the content provider.

281. (Previously Presented) The method of claim 275, wherein the encoded data of the data signal includes a time stamp.

282. (Previously Presented) The method of claim 275, wherein the encoded data of the data signal includes identifying information about the content display site.

283. (Previously Presented) The method of claim 275, wherein the encoded data of the data signal includes demographic information.

284. (Previously Presented) The method of claim 275, further comprising:

extracting the encoded data from the data signal; and

storing the extracted data at the remote site.

285.   (Cancelled)

286.   (Previously Presented)   The method of claim 284, further
comprising analyzing the stored data.

287.   (Previously Presented)   A computer readable medium
comprising a file containing content for display and having embedded therein
at least one computer executable monitoring instruction that, when executed,
causes display of the content associated with the file to be detected, and at
least one computer executable instruction that, when executed, causes data
indicating the content was displayed to be transmitted to a remote site which
did not supply the file.

288.   (Previously Presented)   The computer readable medium
of claim 287, wherein the computer readable medium is resident on a content
provider site.

289.   (Previously Presented)   The computer readable medium
of claim 287, wherein the computer readable medium is resident on a content
display site.

290.   (Previously Presented)   The computer readable medium
of claim 287, wherein the at least one embedded computer executable

monitoring instruction comprises at least one computer executable monitoring instruction that is located in the file to detect the display of the content associated with the file.

291. (Previously Presented)   The computer readable medium of claim 287, wherein the at least one embedded computer executable monitoring instruction comprises a link to at least one computer executable monitoring instruction that resides external to the file to cause detection of the display of the content associated with the file.

292-312   (Cancelled).

313. (Previously Presented)   An article of manufacture comprising a tangible medium storing executable machine readable instructions comprising:

a computer executable display instruction which, when executed, causes an image originally provided by a content provider to be displayed on a display device;

a computer executable monitoring instruction associated with the display instruction such that the monitoring instruction is executed to monitor the display when the image is displayed and such that the monitoring instruction is not executed when the image is not displayed; and

a computer executable transmit instruction which, when executed, causes data indicating the image was displayed to be transmitted to a remote site which did not supply the image.

314. (Previously Presented) An article of manufacture comprising a tangible medium storing executable machine readable instructions comprising:

a computer executable display instruction which, when executed, causes an image originally provided by a content provider to be displayed on a display device;

a computer executable monitoring instruction which, when executed, gathers monitoring information concerning display of the image; and

a computer executable transmit instruction which, when executed, causes the monitoring information to be transmitted to a remote site which did not supply the image, wherein the monitoring instruction and the display instruction are embedded in an HTML file such that the monitoring instruction is only executed when the HTML file is executed to display the image.

315. (Previously Presented) An article of manufacture comprising a tangible medium storing executable machine readable instructions comprising:

a computer executable display instruction which, when executed, causes an image originally provided by a content provider to be displayed on a display device;

a computer executable monitoring instruction which, when executed, gathers monitoring information concerning display of the image; and

a computer executable transmit instruction which, when executed, causes the monitoring information to be transmitted to a remote site which did not supply the image, wherein the display instruction is embedded in an HTML file and the monitoring instruction is referenced by the HTML file such that the monitoring instruction is only executed when the HTML file is executed to display the image.

316.   (Previously Presented)   The method of claim 275, further comprising storing the content file at the content display site, wherein accessing the content file at the content display site comprises accessing the stored content file.

317-330.   (Withdrawn)

331.   (Previously Presented)   The system of claim 242, wherein the monitoring information about the display of the content generated at the content display site includes information concerning a user input relating to the content displayed at the content display site.

332. (Previously Presented)   The system of claim 331, wherein the user input comprises a mouse click.

333. (Previously Presented)   The system of claim 331, wherein the user input comprises a keyboard input.

334. (Previously Presented)   The system of claim 331, wherein the user input is monitored by monitoring events transmitted by an operating system of the content display site.

335. (Previously Presented)   The system of claim 242, wherein the monitoring information about the display of the content generated at the content display site includes information concerning a user selection relating to the content displayed at the content display site.

336. (Previously Presented)   The system of claim 335, wherein the user selection comprises a hyperlink selection.

337. (Previously Presented)   The system of claim 335, wherein the user selection comprises selection of a user interface mechanism.

338. (Previously Presented)   The system of claim 335, wherein the user selection comprises selection of a graphical pushbutton.

339. (Previously Presented)   The system of claim 335, wherein the user selection is monitored by monitoring events transmitted by an operating system of the content display site.

340. (Previously Presented)   The system of claim 242, wherein the monitoring information about the display of the content generated at the content display site includes information concerning a user event relating to the content displayed at the content display site.

341. (Previously Presented)   The system of claim 340, wherein the user event is an event transmitted by an operating system of the content display site.

342. (Previously Presented)   The system of claim 253, wherein the data indicating that the content was displayed comprises information identifying a user input relating to the content displayed at the content display site.

343. (Previously Presented)   The system of claim 342, wherein the user input comprises a mouse click.

344. (Previously Presented) The system of claim 342, wherein the user input comprises a keyboard input.

345. (Previously Presented) The system of claim 342, wherein the user input is monitored by monitoring events transmitted by an operating system of the content display site.

346. (Previously Presented) The system of claim 253, wherein the data indicating that the content was displayed comprises information identifying a user selection relating to the content displayed at the content display site.

347. (Previously Presented) The system of claim 346, wherein the user selection comprises a hyperlink selection.

348. (Previously Presented) The system of claim 346, wherein the user selection comprises selection of a user interface mechanism.

349. (Previously Presented) The system of claim 346, wherein the user selection comprises selection of a graphical pushbutton.

350. (Previously Presented)   The system of claim 346, wherein the user selection is monitored by monitoring events transmitted by an operating system of the content display site.

351. (Previously Presented)   The system of claim 253, wherein the data indicating that the content was displayed comprises information identifying a user event relating to the content displayed at the content display site.

352. (Previously Presented)   The system of claim 351, wherein the user event is an event transmitted by an operating system of the content display site.

353. (Previously Presented)   The system of claim 263, wherein the data indicating that the content was displayed includes information concerning a user input relating to the content displayed at the content display site.

354. (Previously Presented)   The system of claim 353, wherein the user input comprises a mouse click.

355 (Previously Presented)   The system of claim 353, wherein the user input comprises a keyboard input.

356.   (Previously Presented)   The system of claim 353,

wherein the user input is monitored by monitoring events transmitted by an

operating system of the content display site.

357.   (Previously Presented)   The system of claim 263,

wherein the data indicating that the content was displayed includes

information concerning a user selection relating to the content displayed at the

content display site.

358.   (Previously Presented)   The system of claim 357,

wherein the user selection comprises a hyperlink selection.

359.   (Previously Presented)   The system of claim 357,

wherein the user selection comprises selection of a user interface mechanism.

360.   (Previously Presented)   The system of claim 357,

wherein the user selection comprises selection of a graphical pushbutton.

361.   (Previously Presented)   The system of claim 357,

wherein the user selection is monitored by monitoring events transmitted by

an operating system of the content display site.

362. (Previously Presented)   The system of claim 263,
wherein the data indicating that the content was displayed includes
information concerning a user event relating to the content displayed at the
content display site.

363. (Previously Presented)   The system of claim 362,
wherein the user event is an event transmitted by an operating system of the
content display site.

364. (Previously Presented)   The method of claim 275,
wherein the data indicating that the content was displayed comprises
information identifying a user input relating to the content displayed at the
content display site.

365. (Previously Presented)   The method of claim 364,
wherein the user input comprises a mouse click.

366. (Previously Presented)   The method of claim 364,
wherein the user input comprises a keyboard input.

367. (Previously Presented)   The method of claim 364,
wherein the user input is monitored by monitoring events transmitted by an
operating system of the content display site.

368.   (Previously Presented)   The method of claim 275, wherein the data indicating that the content was displayed includes information concerning a user selection relating to the content displayed at the content display site.

369.   (Previously Presented)   The method of claim 368, wherein the user selection comprises a hyperlink selection.

370.   (Previously Presented)   The method of claim 368, wherein the user selection comprises selection of a user interface mechanism.

371.   (Previously Presented)   The method of claim 368, wherein the user selection comprises selection of a graphical pushbutton.

372.   (Previously Presented)   The method of claim 368, wherein the user selection is monitored by monitoring events transmitted by an operating system of the content display site.

373.   (Previously Presented)   The method of claim 275, wherein the data indicating that the content was displayed includes information concerning a user event relating to the content displayed at the content display site.

374. (Previously Presented) The method of claim 373, wherein the user event is an event transmitted by an operating system of the content display site.

375. (Previously Presented) The computer readable medium of claim 287, wherein the data indicating that the content was displayed includes information reflecting a user input.

376. (Previously Presented) The computer readable medium of claim 375, wherein the user input comprises a mouse click.

377. (Previously Presented) The computer readable medium of claim 375, wherein the user input comprises a keyboard input.

378. (Previously Presented) The computer readable medium of claim 375, wherein the user input is monitored by monitoring events transmitted by an operating system.

379. (Previously Presented) The computer readable medium of claim 287, wherein the data indicating that the content was displayed includes information reflecting a user selection.

380. (Previously Presented)   The computer readable medium of claim 379, wherein the user selection comprises a hyperlink selection.

381. (Previously Presented)   The computer readable medium of claim 379, wherein the user selection comprises selection of a user interface mechanism.

382. (Previously Presented)   The computer readable medium of claim 379, wherein the user selection comprises selection of a graphical pushbutton.

383. (Previously Presented)   The computer readable medium of claim 379, wherein the user selection is monitored by monitoring events transmitted by an operating system.

384. (Previously Presented)   The computer readable medium of claim 287, wherein the data indicating that the content was displayed includes information concerning a user event.

385. (Previously Presented)   The computer readable medium of claim 384, wherein the user event is an event transmitted by an operating system.

386.   (Previously Presented)   The article of manufacture of claim 313, wherein the data indicating that the image was displayed is information identifying a user input relating to the image.

387.   (Previously Presented)   The article of manufacture of claim 386, wherein the user input comprises a mouse click.

388   (Previously Presented)   The article of manufacture of claim 386, wherein the user input comprises a keyboard input.

389.   (Previously Presented)   The article of manufacture of claim 386, wherein the user input is monitored by monitoring events transmitted by an operating system.

390.   (Previously Presented)   The article of manufacture of claim 313, wherein the data indicating that the image was displayed is information identifying a user selection relating to the image.

391.   (Previously Presented)   The article of manufacture of claim 390, wherein the user selection comprises a hyperlink selection.

392. (Previously Presented)   The article of manufacture of claim 390, wherein the user selection comprises selection of a user interface mechanism.

393. (Previously Presented)   The article of manufacture of claim 390, wherein the user selection comprises selection of a graphical pushbutton.

394. (Previously Presented)   The article of manufacture of claim 390, wherein the user selection is monitored by monitoring events transmitted by an operating system.

395. (Previously Presented)   The article of manufacture of claim 313, wherein the data indicating that the image was displayed includes information concerning a user event relating to the image.

396. (Previously Presented)   The article of manufacture of claim 395, wherein the user event is an event transmitted by an operating system.

397. (Previously Presented)   The article of manufacture of claim 314, wherein the monitoring information concerning display of the image includes information reflecting a user input relating to the image.

398. (Previously Presented)   The article of manufacture of claim 397, wherein the user input comprises a mouse click.

399. (Previously Presented)   The article of manufacture of claim 397, wherein the user input comprises a keyboard input.

400. (Previously Presented)   The article of manufacture of claim 397, wherein the user input is monitored by monitoring events transmitted by an operating system.

401. (Previously Presented)   The article of manufacture of claim 314, wherein the monitoring information concerning display of the image includes information reflecting a user selection relating to the image.

402. (Previously Presented)   The article of manufacture of claim 401, wherein the user selection comprises a hyperlink selection.

403. (Previously Presented)   The article of manufacture of claim 401, wherein the user selection comprises selection of a user interface mechanism.

404.   (Previously Presented)   The article of manufacture of claim 401, wherein the user selection comprises selection of a graphical pushbutton.

405.   (Previously Presented)   The article of manufacture of claim 401, wherein the user selection is monitored by monitoring events transmitted by an operating system.

406.   (Previously Presented)   The article of manufacture of claim 314, wherein the data indicating that the image was displayed includes information concerning a user event relating to the image.

407.   (Previously Presented)   The article of manufacture of claim 401, wherein the user event is an event transmitted by an operating system.

408.   (Previously Presented)   The article of manufacture of claim 315, wherein the monitoring information concerning display of the image reflects at least one user input.

409.   (Previously Presented)   The article of manufacture of claim 408, wherein the user input comprises a mouse click.

410.   (Previously Presented)   The article of manufacture of claim 408, wherein the user input comprises a keyboard input.

411.   (Previously Presented)   The article of manufacture of claim 408, wherein the user input is monitored by monitoring events transmitted by an operating system.

412.   (Previously Presented)   The article of manufacture of claim 315, wherein the monitoring information concerning display of the image reflects at least one user selection.

413.   (Previously Presented)   The article of manufacture of claim 412, wherein the user selection comprises a hyperlink selection.

414.   (Previously Presented)   The article of manufacture of claim 412, wherein the user selection comprises selection of a user interface mechanism.

415.   (Previously Presented)   The article of manufacture of claim 412, wherein the user selection comprises selection of a graphical pushbutton.

416.   (Previously Presented)   The article of manufacture of claim 412, wherein the user selection is monitored by monitoring events transmitted by an operating system.

417.   (Previously Presented)   The article of manufacture of claim 315, wherein the monitoring information concerning display of the image reflects at least one user event.

418.   (Previously Presented)   The article of manufacture of claim 417, wherein the user event is an event transmitted by an operating system.

419-440.   (Withdrawn)

IX.   <u>Evidence Appendix</u>

No evidence under 37 C.F.R. § 1.130, 1.131, or 1.132 is being relied

upon. The evidence relied upon is reflected in the following table.

Reference	Entered in Record
Dedrick, US Patent 5,724,521	PTO-892 attached to the Office action mailed January 24, 2005

A Copy of the above-noted evidence is attached hereto.

X. <u>Related Proceedings Appendix</u>

NetRatings, Inc. v. Coremetrics, Inc. (No. 05-314 (D. Del.))

NetRatings, Inc. v. Omniture, Inc. (No. 05-313 (D. Del.)

NetRatings, Inc. v. SageMetrics Corp. (No. 05:4507 (C.D. Ca.)

NetRatings, Inc. v. Sane Solutions, LLC (No. 05-CV-5076 (S.D.N.Y.)

NetRatings, Inc. v. Visual Sciences, LLC (No. 05-CV-349 (E.D. Va.)